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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,519	04/26/2000	Peter V. Boesen M.D.	P04179US0	9687

22885 7590 11/08/2011

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ART UNIT	PAPER NUMBER
3686	

NOTIFICATION DATE	DELIVERY MODE
11/08/2011	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER V. BOESEN

Appeal 2010-000287
Application 09/558,519
Technology Center 3600

Before: MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant seeks our review under 35 U.S.C. § 134 from the Examiner's final rejection of claims 84-89, 92-94, 98-100, 102, 103, 105, 108, and 110. Claims 1-83, 90, 91, 95-97, 101, 104, 106, 107, 109, and 111 are canceled. We affirm.

THE CLAIMED INVENTION

Appellant claims a point of service billing and records system that places the responsibility for billing on the health care provider (Specification 1:6-11). Independent claims 84, 92, 98, and 105 are illustrative of the claimed subject matter:

> 84. A method for providing medical coding comprising:
> receiving a selection of a patient procedure code on a first computer, the patient procedure code representing a procedure performed on a patient during a patient encounter;
> receiving a selection of a plurality of diagnosis codes on the first computer, each of the plurality of diagnosis codes representing a diagnosis applicable to the procedure performed during the patient encounter;
> linking the selection of the patient procedure code to the selection of the plurality of diagnosis codes on the first computer;
> providing a user interface adapted for ranking the plurality of diagnosis codes linked with the patient procedure code in a user defined rank order after receiving the selection of the plurality of diagnosis codes;
> documenting the patient encounter by storing the rank ordering of the selection of the plurality of diagnosis codes linked to the selection of the patient procedure code of the procedure performed to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined

ranking of each diagnosis supporting the procedure performed.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Dorne	US 5,325,293	Jun. 28, 1994
Lavin	US 5,772,585	Jun. 30, 1998
Goltra	US 5,823,949	Oct. 20, 1998
Waters	US 6,393,404 B2	May 21, 2002

REJECTIONS

The following rejections are before us for review.

The Examiner rejected claims 84, 88, 89, 94, 98-100, 102, 103, and 110 under 35 U.S.C. § 103(a) over Waters, Dorne, and Goltra.

The Examiner rejected claims 85-87 under 35 U.S.C. § 103(a) over Waters, Dorne, Goltra, and Lavin.

The Examiner rejected claims 92, 93, 105, and 108 under 35 U.S.C. § 103(a) over Waters and Goltra.

ISSUES

Did the Examiner err in rejecting claims 84-89, 94, and 110 under 35 U.S.C. § 103(a) over Waters, Dorne, and Goltra as disclosing linking diagnosis and procedure codes with ranked diagnosis codes for a patient medical encounter since Waters discloses recording both diagnosis and procedure codes for a medical encounter by a medical professional selected in an order determined by the medical professional, and Goltra further discloses a ranking of diagnosis codes?

Did the Examiner err in rejecting claims 98-100, 102, and 103 under 35 U.S.C. § 103(a) over Waters, Dorne, and Goltra as disclosing *receiving a change in ordering of diagnosis codes from a user* when no reordering of codes is disclosed?

Did the Examiner err in rejecting claims 105 and 108 under 35 U.S.C. § 103(a) over Waters and Goltra as disclosing *using the user interface to reorder the plurality of diagnosis codes* when no reordering of codes is disclosed?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence.

1. Goltra discloses *documenting the patient encounter* in that its system "can also be used when creating a patient chart." (Col. 6 ll. 1-3).
2. Waters discloses a system and method for medical claim reimbursement involving diagnosis and procedure codes (Col. 3 ll. 30-37).
3. Dorne discloses a system and method for medical claim reimbursement involving diagnosis and procedure codes (Col. 16 ll. 9-22).
4. Goltra discloses the background problems facing healthcare professionals who must adequately document diagnostic and procedures for patients whose medical bills are being paid by insurance companies (Col. 2 ll. 9-13).
5. Goltra discloses a method and apparatus for creating patient charts that contain ranked diagnosis codes (Col. 2 ll. 52-55).
6. Goltra discloses listing procedure codes for tests, therapies, and medications (Col. 4 ll. 24-27).
7. Goltra discloses (Col. 2 ll. 25-30) in background that existing systems still contain problems, such as systems that "lack flexibility so as to be

configurable by the healthcare professional so as to provide specific help in determining diagnoses and for prompting the healthcare professional with lists of symptoms, questions which should be asked and tests that should be performed in certain circumstances."

8. Goltra discloses configuring the number of ranked diagnoses for selection that are displayed, stating:

> The computerized medical system than selects a predetermined number of diagnoses. For example, the computerized medical system could select the top five diagnoses. It will be understood that while the computerized medical system may be set to a default value, it may be possible for a healthcare professional to change the system so as to only use, for example, the top two diagnoses or the top 10 diagnoses, depending on the desires of the healthcare professional.

(Col. 4 ll. 66 to Col. 5 ll.7).

9. Waters discloses a system to link diagnosis and procedure codes for a patient encounter "with the medical professional entering medical diagnosis and selecting medical procedures directly." (Col. 2 ll. 24-26).
10. Waters discloses that "as the medical professional diagnoses the patient's condition, another window **30** shows the selected diagnosis codes." (Col. 3 ll. 50-52).
11. Waters discloses that "[a]s the medical professional selects the procedures to perform on the patient, those ordered procedures are shown in another window **60**." (Col. 3 ll. 60-63).
12. Waters discloses creating a *record* of the *patient encounter*, in that "the attending medical professional records the medical diagnosis and ordered medical procedures" in to the computer (Col. 2 ll. 25-27).
13. Waters discloses a system to optimize recorded procedure codes for a patient visit to find any possible procedure combinations that satisfy the

criteria of lowest reimbursement for the original ordered procedures (Col. 2 ll. 6-22).

ANALYSIS

Claims 84-89, 94, and 110

The rejection is affirmed as to independent claim 84. Appellant does not provide a substantive argument (Appeal Br. 11, 12) as to the separate patentability of claims 85-89, 94, and 110 that depend from claim 84, which is the sole independent claim among those claims. Therefore, we address only claim 84, and claims 85-89, 94, and 110 fall with claim 84. See, 37 C.F.R. § 41.37(c)(1)(vii).

Appellant argues "Waters et al. cites codes for billing purposes but fails to teach how codes can be used to better document the patient encounter." (Appeal Br. 8).

Appellant's argument fails because it argues a limitation not part of the claims, specifically "to better document." This is because the claim requires *documenting the patient encounter*, but there is no requirement to "better document."

The argument also is not well taken because the Appellant is attacking the reference individually when the rejection is based on a combination of references. *See In re Young*, 403 F.2d 754, 757-58 (CCPA 1968). The Examiner does not rely on Waters to show the *documenting* step; rather the Examiner relies on Goltra for this feature (Answer 6), and Goltra discloses *documenting the patient encounter* in the well-known method of a patient medical chart (FF 1), thus meeting the claim language.

Appellant next argues "Waters et al. optimizes codes for billing which is inconsistent with and teaches away from using and maintaining codes in a

manner which links procedure codes with diagnosis codes and maintains a rank ordering of the diagnosis codes associated with each procedure." (Appeal Br. 8).

We are not persuaded by Appellant's argument. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006) (citations and internal quotation marks omitted). *See also In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (noting that merely disclosing more than one alternative does not teach away from any of these alternatives if the disclosure does not criticize, discredit, or otherwise discourage the alternatives). We find nothing inconsistent with Waters being directed to optimizing codes versus linking and ranking codes. Linking and ranking is one possible way to optimize, such that the discussion of optimization does not teach away from linking and ranking codes. Additionally, Waters records the diagnosis and procedure codes for the patient before attempting to find combination procedures with a lower reimbursement amount (FF 13), which we find does not remove the initial recording and linking of procedure and diagnosis codes.

Appellant argues "Dorne fails to record the same amount of information about the patient encounter as in the claimed invention and Dorne fails to realize the benefit of linking procedure codes with diagnosis codes and maintaining a rank ordering of the diagnosis codes associated with each procedure" (Appeal Br. 9).

We are not persuaded by Appellant's argument, because, once again, Appellant is attacking the reference individually when the rejection is based

on a combination of references, because Appellant's argument is directed to only one of the references. The Examiner does not rely on Dorne to show the *documenting* step; rather, the Examiner relies on Goltra for this feature (Answer 6), and Goltra discloses *documenting the patient encounter* in the well-known method of a patient medical chart (FF 1), thus meeting the claim language.

Appellant next argues, "Goltra does mention ranking of diagnoses, but it is a very different context ..." (Appeal Br. 9-10).

We are not persuaded by Appellant's argument. Appellant only argues that Golta's ranking disclosure "is a very different context" (Appeal Br. 10). We find, however, that the combination of Waters, Dorne, and Goltra is proper because each deals with common problems in medical diagnosis, record keeping, and billing (FF 2-6), and the use of Goltra is thus not in a "different context" as asserted.

Appellant argues the combination of prior art references fail to disclose the claimed *documenting* step since the claim "is a significant difference from the cited prior art because it provides for code-driven documentation of a patient encounter, providing additional documentation regarding why a health care provider performed a particular procedure, what diagnosis was most important to them in making that decision." (Appeal Br. 10-11).

We are not persuaded by Appellant's argument, because we find that Waters, Dorne, and Goltra disclose systems and methods for code-driven documentation of a patient encounter (FF 2-4, 6), and ranking of procedures (FF 5), thus meeting the claim language. The claim does not require that the ranking be based on "what diagnosis was most important", but only requires

documenting to include *diagnosis codes linked* to *the patient procedure code*, *supporting the procedure performed*, and *ranking of each diagnosis*.

Claims 98-100, 102, and 103

Independent claim 98 recites, in pertinent part, *receiving a change in ordering of diagnosis codes from a user*.

Appellant argues the cited prior art does not teach the limitation, where "what is being rank ordered are the diagnosis codes associated with the patient procedure code during the patient encounter." (Appeal Br. 11).

We are persuaded of error in this rejection here because although Goltra discloses presenting diagnosis codes to the healthcare professional that are already ranked by the system (FF 5), Goltra does not disclose *a change in ordering of diagnosis codes*. The Examiner interprets Goltra's disclosure to meet the claim language (Answer 8). As cited by the Examiner (Answer 8), Goltra discloses in background that prior systems "lack flexibility so as to be configurable" (FF 7), and discloses an option for the healthcare provider to "change the system so as to only use, for example, the top two diagnosis or the top 10 diagnoses" (FF 8), but these disclosures do not address the claimed *change in ordering*, as they address only a change in the number of codes displayed. We find Waters discloses a post-entry step to optimize procedure codes (FF 13), but we do not find in Waters, Dorne, or Goltra a reordering of diagnosis codes in the patient record. We therefore cannot sustain the rejection of claim 98. Since claims 99, 100, 102, and 103 depend from claim 98, and since we cannot sustain the rejection of claim 98, the rejection of claims 99, 100, 102, and 103 likewise cannot be sustained.

Claims 92 and 93

Independent claim 92 recites, in pertinent part, *linking the plurality of diagnosis codes in a user defined rank order to the patient procedure code*

such that a defined relationship between the patient procedure code and the plurality of diagnosis codes is maintained to thereby provide a record of the procedure performed, a record of each diagnosis supporting the procedure performed, and a user defined ranking of each diagnosis supporting the procedure performed to provide a record of the patient encounter.

Appellant argues "[n]either Waters et al. nor Goltra disclose such a limitation." (Appeal Br. 12).

We disagree with Appellants. We find Waters discloses linking diagnosis codes and procedure codes for a patient (FF 9) by selecting and storing diagnosis codes in a user-defined order (FF 10), and selecting and storing procedure codes (FF 11) to *maintain* them in a *record* of the patient encounter (FF 12), thus meeting the claim limitations. Goltra also discloses storing diagnosis and procedures in making a patient chart (FF 1, 5, 6), and is thus a cumulative reference to Waters.

Claims 105 and 108

Independent claim 105 recites, in pertinent part, *using the user interface to reorder the plurality of diagnosis codes*.

Appellant argues, "Goltra discusses an ordering of codes but not reordering diagnosis codes using a user interface." (Appeal Br. 13).

We agree, for the same reasons we set forth above at claim 98. We therefore cannot sustain the rejection of claim 105. Since claim 108 depends from claim 105, and since we cannot sustain the rejection of claim 105, the rejection of claim 108 likewise cannot be sustained.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 84, 88, 89, 94, and 110 under 35 U.S.C. § 103(a) under 35 U.S.C. § 103(a) over Waters, Dorne, and Goltra.

The Examiner did not err in rejecting claims 85-87 under 35 U.S.C. § 103(a) over Waters, Dorne, Goltra, and Lavin.

The Examiner did not err in rejecting claims 92 and 93 under 35 U.S.C. § 103(a) over Waters and Goltra.

The Examiner erred in rejecting claims 98-100, 102, and 103 under 35 U.S.C. § 103(a) over Waters, Dorne, and Goltra.

The Examiner erred in rejecting claims 105 and 108 under 35 U.S.C. § 103(a) over Waters and Goltra.

DECISION

For the above reasons, the Examiner's rejections of claims 84-89, 92-94, and 110 are AFFIRMED.

The Examiner's rejections of claims 98-100, 102, 103, 105, and 108 are REVERSED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED-IN-PART

JRG